

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7777

Petition of Green Mountain Power Corporation)
and Vermont Electric Cooperative, Inc., for)
authority, pursuant to 30 V.S.A § 110-112, to)
condemn easement rights in property interests of)
the Monastery of the Immaculate Heart of Mary,)
Inc., located in Westfield, Vermont, for the)
purpose of constructing the 46 kV transmission)
line portion of the so-called Kingdom)
Community Wind Project)

Order entered: 11/10/2011

ORDER CLOSING DOCKET

I. REPORT

On June 30, 2011, Green Mountain Power Corporation and Vermont Electric Cooperative, Inc. (collectively, "the Petitioners") filed a joint petition with the Public Service Board ("Board") requesting authority to condemn certain property interests of the Monastery of the Immaculate Heart of Mary, Inc. ("Landowner"), on land located in Westfield, Vermont, for the purpose of constructing a 46 kV transmission line related to the so-called Kingdom Community Wind Project. A prehearing conference in this Docket was held on October 3, 2011.

On October 14, 2011, the Petitioners filed a Notice of Voluntary Dismissal pursuant to V.R.C.P. 41(a)(1) which stated that the Petitioners and the Landowner had resolved the matter. Voluntary dismissal of an action by the plaintiff is only available under V.R.C.P. 41(a)(1) before an adverse party serves an answer or a motion for summary judgment (or by a stipulation signed by all the parties). Since proceedings had already commenced in this docket and I had conducted a prehearing conference, it is not clear that voluntary dismissal under V.R.C.P. 41(a)(1) is available.¹ Consequently, I will treat the notice as a motion for dismissal pursuant to V.R.C.P.

1. See, for example, Docket 7397 (Order of 11/13/08); Docket 7419 (Order of 5/21/09).

41(a)(2).² Because it appears that the only prejudice arising from dismissal of this petition would be to the parties seeking condemnation (namely, GMP and VEC) and those parties are now requesting the dismissal, I conclude that the petition for condemnation may be dismissed and this docket closed.

This decision is not adverse to the interest of any party, so it need not be circulated to the parties pursuant to 3 V.S.A. § 811. This report is made to the Public Service Board pursuant to 30 V.S.A. § 8.

Dated at Montpelier, Vermont, this 10th day of November, 2011.

s/Edward McNamara

Edward McNamara, Esq.
Hearing Officer

2. In the future and under similar circumstances, the Petitioners should file a motion to dismiss pursuant to V.R.C.P. 41(a)(2) or a stipulation of dismissal signed by all parties pursuant to V.R.C.P. 41(a)(1), rather than a notice of dismissal.

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report of the Hearing Officer is accepted.
2. This docket shall be closed.

Dated at Montpelier, Vermont, this 10th day of November, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: November 10, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.